

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Telephone Number Portability	)	
	)	CC Docket No. 95-116
Petition for Declaratory Ruling of the	)	
Cellular Telecommunications	)	
& Internet Association	)	

To: The Commission

**Comments of ALLTEL Corporation**

ALLTEL Corporation (“ALLTEL”), on behalf of its various subsidiaries providing wireline local exchange service and its separated subsidiaries and affiliates providing wireless services, submits its comments on the January 23, 2003 Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association (the “CTIA Petition”).<sup>1</sup> The CTIA Petition seeks Commission action on a matter that is both critical to the ongoing implementation of wireless local number portability (“WLNP”) but which has been pending before it for almost five years. It generally seeks an immediate determination from the Commission that wireline carriers have an obligation to port their customers’ telephone numbers to a CMRS provider whose service area overlaps with the wireline carrier’s rate center.

**I. Introduction.**

ALLTEL is a diversified telecommunications carrier that provides both wireline and wireless services through structurally separated subsidiaries and affiliates. Its subsidiary, ALLTEL Communications, Inc., is one of the interveners in the appeal of the Commission’s

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<sup>1</sup> The CTIA Petition appeared on Public Notice, DA 03-20211 soliciting comments by February 26, 2003.

decision to continue to impose number portability obligations on CMRS providers.<sup>2</sup> ALLTEL at its core is a traditional common carrier and long-term Commission licensee. It understands well both its duties under the Commission's rules as well as its obligations under the public interest standard. It will ultimately comply with each of the Commission's various mandates – WLNP included - to the best of its ability to do so.

But in the case of WLNP, it cannot do so without strenuously protesting the absence of clear and definitive rules governing WLNP implementation. For ALLTEL continues to believe from both its wireline and wireless perspectives, that WLNP is, at this time, an unjustified and ill-advised distortion to both the vigorously competitive CMRS market and to the currently chaotic wireline market. It will ultimately promote consolidation in the wireless marketplace, leaving consumers with fewer choices. It will divert capital from wireless carriers' efforts to provide subscribers the things they truly desire (and for which regulators continue to clamor) – better service and coverage – and which contribute to the greater public interest.<sup>3</sup> WLNP will decimate the traditionally regulated local exchange industry which will soon awake to find itself competing head-to-head against deregulated nationwide bundled wireless service plans (including free long distance) with plans offering limited wireline local calling scopes set by state regulators and mandated 1-plus dialing parity for toll calls. ALLTEL believes the ultimate consequence of WLNP in the current environment will be that, while subscribers may change carriers and take their number with them, it will no longer be worth it – for the service quality of every carrier, and

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<sup>2</sup> Cellular Telecommunication & Internet Association and Celco Partnership, d/b/a Verizon Wireless v. FCC, No. 02-1264 (D.C. Cir.).

<sup>3</sup> In this connection, ALLTEL notes the significant investment it is making in converting its network to digital CDMA technology, which in turn is the basic platform upon which its AGPS-based handset E-911 Phase II solution operates. ALLTEL is constrained to note the ultimate reality that ubiquitous coverage is the necessary foundation upon which ubiquitous E-911 service is based. Simply stated, on a scale of higher public interest goals, ALLTEL believes that improved coverage – and hence improved E-911 service trumps wireless local number portability. Unfortunately, the Commission continues to demand both “guns and butter.”

in particular regional and smaller carriers like ALLTEL, will have been significantly marginalized.

The Commission's numerous decisions<sup>4</sup> reiterate its view that WLNP is to be implemented to augment the ability of wireless carriers to compete for traditional two-way voice wireline local exchange service. But ALLTEL believes the Commission has much work to do – and quickly -- to establish the broad-based regulatory parity required for open and even handed intermodal competition. Implementation issues remain that require resolution – and resolutions upon which carriers can rely in the knowledge that they apply to industry across the board and carry both the force and compulsion of law. The CTIA Petition raises only one – the rate center disparity issue – but there are others that must be disposed of by the Commission before WLNP can be implemented in an orderly, balanced and equitable manner.

#### **I. The CTIA Petition**

Essentially, the CTIA petition seeks to equate the term “presence” in a rate center to the ability of a wireless carrier to provide service or coverage to subscribers within that rate center. ALLTEL concurs with CTIA's analysis. By virtue of the requirements of Section 251(b) LECs cannot escape the obligation to port numbers to any other “telecommunications carrier” a definition which includes wireless carriers. If the goal of WLNP is, as the Commission has repeatedly stated, to promote wireless competition to traditional wireline local exchange service, it cannot either through inaction or adverse decision undercut the very basis for the WLNP mandate by artificially limiting the extent of the competition to select rate centers. Any other result would, according to CTIA, deprive nearly 90% of all wireline customers of the ability to port their wireline number to a wireless carrier.<sup>5</sup> After an almost five year delay, the

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<sup>4</sup> CTIA Petition at pages 12-16.

<sup>5</sup> CTIA Petition at page 18.

Commission must rule on the CTIA Petition for, as CTIA aptly points out, it is under the affirmative obligation to make the determination.<sup>6</sup>

### **III. The Implications of the Federal Advisory Committee Act.**

Commenters in other related proceedings have noted the absolute lack of coherence in the Commission's various orders and numbering rules, and in particular, the rules governing the provision of local number portability.<sup>7</sup> Most of the detailed and complex requirements underlying implementation of WLNP have been left to the North American Numbering Council ("NANC") to determine with little, if any, input or supervision from the Commission. Little has been done to provide carriers with concrete guidance on WLNP implementation either through clarification of the rules or formal adoption of the NANC recommendations.

Indeed, in the LNP Second Report and Order<sup>8</sup> the Commission appointed NANC the first-line arbiter of LNP implementation issues. The Commission set out a specific process through which controversies unresolved by NANC would be definitively settled by the Commission. In short, NANC would submit a report and the Commission would then subject the NANC report to public comment. The Commission could, if it was so disposed, issue an order adopting, modifying or denying the recommendations in the NANC report. Where the Commission took no action, the NANC recommendations were deemed to have been adopted.<sup>9</sup> The Commission's order and rules are essentially silent as to any specific procedure for the adoption of NANC recommendations made in the absence of any objection by a NANC member,

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<sup>6</sup> CTIA Petition at page 11, noting that the Federal Advisory Committee Act requires the agency to make these determinations.

<sup>7</sup> See Comments of U.S. Cellular Corporation filed May 6, 2002 in response to the Third Order on Reconsideration in CC Docket No. 99-200, Third Notice of Proposed Rulemaking in Docket No. 99-200, and Second Notice of Proposed Rulemaking in CC Docket No. 95-116, FCC 02-73 (released March 14, 2002). Although this proceeding has a direct bearing on the carriers' obligation to implement LNP generally, it has not yet been resolved by the Commission.

<sup>8</sup> Second Report and Order, In the Matter of Telephone Number Portability, CC Docket No. 95-116, FCC 97-289 (released August 8, 1997) (the "LNP Second Report and Order"); See also 47 CFR Sec. 52.26

<sup>9</sup> Id. at para. 130; See also 47 CFR Sec. 52.26

unless the rules are loosely construed to apply to any NANC recommendation, in which case, it appears that the notice and comment procedures would be followed.

NANC, however, is but an advisory committee duly chartered under The Federal Advisory Committee Act 5 USCS Appx Sec. 1-16. It has no independent authority to either promulgate or enforce regulation. Indeed, under the express purposes of the Act, “the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.” 5 USCS Appx Sec. 2(b)(6). The limited power of advisory committees is further confirmed at 5 USCS Sec. 9 (b):

Unless otherwise specifically provided by statute or the Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government. 5 SCS Sec. 9(b).

On the face of the statute and the record in this proceeding, it appears that few, if any, of the carrier obligations and technical requirements for WLNP implementation have any force of law. NANC is an advisory committee whose recommendations must be acted upon by the Commission, presumably under the procedures, including public notice and comment, set forth by the Commission itself in the LNP Second Report and Order and Sec. 52.26 of the rules. Indeed, in this connection, the process for WLNP stands in stark contrast to that employed by the Commission for establishing wireline local number portability, inasmuch as Section 52.26(a) of the rules contains a specific reference to the adoption of the pertinent NANC recommendations. But with respect to WLNP, various NANC reports have never been placed on public notice for comment, let alone affirmatively adopted by the Commission.<sup>10</sup> ALLTEL asserts that both public notice and affirmative Commission action are required for any NANC recommendation to have full force and effect, for adoption of any recommendation by inaction as the Commission’s own

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<sup>10</sup> See CTIA Petition at page 9-10; footnotes 22-23.

procedures permit, would constitute an illegal delegation of authority and a violation of the bedrock principals of Sec.553 of the Administrative Procedures Act and the Federal Advisory Committee Act.

The Commission's oversight is not trivial to carriers, like ALLTEL, who will seek to comply with the WLNP requirements, should the Commission's decision survive judicial scrutiny. But the technical standards, intercarrier communications and business process required to implement WLNP, while having been the subject of NANC recommendations, have yet to be adopted by the Commission. The net result is that carriers are expected to go forward with implementation in the absence of dully adopted and concrete guidance from the Commission. For example, how, where, and upon what legal basis for example, shall ALLTEL seek to enforce the requirements for porting time intervals should a competing carrier for what ever reason decide on a particular date that the "standard" three hour interval is simply too short?

ALLTEL does not proffer these arguments to impugn NANC or its process, for NANC has performed its statutory function. Nor does ALLTEL seek to promote micro-management of the WLNP implementation process by the Commission, for ALLTEL believes that the deregulatory process through which standards have been considered continues to be entirely workable. But ultimately, the supervisory role of the federal agency must be conducted in accord with the tenants of the applicable statutes and its own rules. This is a role that cannot be dispensed with lightly, for competition breeds both benefit and mischief. It is the agency that must ultimately have the legal authority to determine the rules and provide the basis for any enforcement mechanism.

#### **IV. The Unanswered Questions and Conclusion.**

Despite the impending November 2003 deadline, there remain issues and processes associated with WLNP which have yet to be resolved despite NANC's efforts. For example, with respect to wireline to wireless intermodal porting, there does not appear to be any definitive resolution of the time frame in which an intermodal port must be achieved, nor have the

implications of intermodal ports to E-911 service been definitively resolved. Where only intercarrier service agreements are required – as CTIA suggests<sup>11</sup>-- no definitive process exists by which a carrier may obtain resolution of a dispute between carriers as to terms. Each of these matters, as well as the other matters pending before NANC, must be resolved by the Commission before WLNP can be successfully implemented.

The Commission also has much larger work to do beyond the scope of the narrow WLNP implementation rules. It must act on the CTIA petition, and in doing so, promote the further development of intermodal competition. But before doing so, it must address the broad scope of regulatory issues that impact fair and balanced intermodal competition including intercarrier compensation issues, regulatory parity issues and the conditions upon which universal service is made available to intermodal competitors. In the absence of a level playing field, intermodal competition will devolve into multi-modal chaos and WLNP will have been the principal culprit.

Respectfully submitted,

ALLTEL Corporation

By: \_\_\_\_\_

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<sup>11</sup> CTIA Petition at page 3.

